

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7771

Joint Petition of Green Mountain Power Corporation)
("GMP") and Vermont Electric Cooperative, Inc.)
("VEC"), pursuant to 30 V.S.A. § 110-112, for authority)
to condemn easement rights in property interests of the)
McAllister Family Trust, William H. McAllister and)
Barbara M. McAllister, Trustors and/or Trustees, located)
in Lowell, Vermont, for the purpose of constructing the)
46 kV transmission line portion of the so-called)
Kingdom Community Wind Project)

Order entered: 12/6/2011

ORDER RE: CLOSING DOCKET

I. REPORT

On June 17, 2011, Green Mountain Power Corporation ("GMP") and Vermont Electric Cooperative, Inc. ("VEC," and collectively, "the Petitioners"), filed a joint petition (the "Petition") with the Vermont Public Service Board ("Board") to request authority to condemn easement rights in property interests of the McAllister Family Trust, William H. McAllister and Barbara M. McAllister, Trustors and/or Trustees, for the purpose of constructing the 46 kV transmission line portion of the so-called Kingdom Community Wind Project. A prehearing conference in this Docket was held on September 22, 2011.

On November 18, 2011, the Petitioners filed a Notice of Voluntary Dismissal of their Petition notifying the Board the matter has been resolved. Voluntary dismissal of an action by the plaintiff is only available under V.R.C.P. 41(a)(1) before an adverse party serves an answer or a motion for summary judgment (or by a stipulation signed by all the parties). Since proceedings had already commenced in this docket and I had conducted a prehearing conference, it is not clear that voluntary dismissal under V.R.C.P. 41(a)(1) is available.¹ Consequently, I will treat

1. See, for example, Docket 7397 (Order of 11/13/08); Docket 7419 (Order of 5/21/09); Docket 7773 (Order issued 10/26/11). See further discussion in Docket 7772 (Order of 12/1/11).

the notice as a motion for dismissal pursuant to V.R.C.P. 41(a)(2).² Because it appears that the only prejudice arising from dismissal of this petition would be to the parties seeking condemnation (namely, GMP and VEC) and those parties are now requesting the dismissal, I conclude that the petition for condemnation may be dismissed and this docket closed.

This decision is not adverse to the interest of any party, so it need not be circulated to the parties pursuant to 3 V.S.A. § 811. This report is made to the Public Service Board pursuant to 30 V.S.A. § 8.

Dated at Montpelier, Vermont, this 6th day of December, 2011.

s/ John P. Bentley

John P. Bentley, Esq.
Hearing Officer

2. In the future and under similar circumstances, the Petitioners should file a motion to dismiss pursuant to V.R.C.P. 41(a)(2) or a stipulation of dismissal signed by all parties pursuant to V.R.C.P. 41(a)(1), rather than a notice of dismissal. The present pleading was filed as "Notice of Dismissal Under V.R.C.P. 41(a)(2)", which makes little sense given that V.R.C.P. 41(a)(2) provides for dismissal by order of the court, rather than by notice of dismissal. However, the text seeks dismissal under V.R.C.P. 41(a)(1) or V.R.C.P. 41(b)(1); V.R.C.P. 41(b)(1) pertains to dismissal upon the Court's own motion.

II. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board of the State of Vermont that:

1. The Report of the Hearing Officer is accepted.
2. The motion for dismissal is granted.
3. This docket shall be closed.

Dated at Montpelier, Vermont, this 6th day of December, 2011.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/ David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: December 6, 2011

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.